

RACHEL MAIMIN
HAGAN SCOTTEN
JESSICA FEINSTEIN
DREW JOHNSON-SKINNER
Assistant United States Attorneys
- Of Counsel -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
	:	S2 15 Cr. 95 (AJN)
- v. -	:	
	:	
BARFFOUR ABEBERSE,	:	
	:	
Defendant.	:	
-----X	:	

PRELIMINARY STATEMENT

The defendant in this case, Barffour Abeberse, is scheduled to be sentenced on August 22, 2017. The Government respectfully submits this memorandum in advance of that sentencing and in response to Abeberse’s sentencing memorandum, which requests a sentence of 78 months’ imprisonment, a significant downward variance from the United States Sentencing Guidelines (“U.S.S.G.” or the “Guidelines”) range of 120 to 150 months’ imprisonment.¹ For the reasons that follow, the Government disagrees and requests that the Court impose a sentence within the Guidelines range. Abeberse was an extremely violent and vocal member of the Big Money Bosses (“BMB” or the “Gang”), with which he also sold crack cocaine. There is no basis in this case for a downward variance, much less the variance Abeberse seeks.

¹ As detailed below, this range differs from the range in the Presentence Report (the “PSR”) for two reasons: (1) the PSR did not designate Abeberse as a career offender, as the parties stipulated in their Plea Agreement; the Government has been advised by the Probation Office that it agrees this was an oversight, and that Abeberse is in fact a career offender; and (2) without any explanation, the PSR did not grant Abeberse a downward departure pursuant to U.S.S.G. § 2E1.1, Application Note Four, as the parties stipulated; the Government respectfully disagrees with the Probation Office on this issue.

I. Procedural History

On April 27, 2016, the S2 Indictment in this case was unsealed, charging 63 members and associates of BMB with: (1) racketeering conspiracy, in violation of Title 18, United States Code Section 1962; (2) narcotics conspiracy, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(A), and 846; (3) narcotics distribution, in violation of Title 21, United States Code, Section 860; and/or (4) firearms discharge, in violation of Title 18, United States Code, Section 924(c)(1)(A)(iii).

On December 2, 2016, Abeberse pled guilty to Count One of the S2 Indictment in this case, which charged him with racketeering conspiracy, in violation of Title 18, United States Code, Section 1962(d). (PSR ¶ 8.)

II. Offense Conduct

A. Background

Beginning in December 2014, the New York City Police Department, the Drug Enforcement Administration, Homeland Security Investigations, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives conducted an investigation into two rival street gangs—BMB and the 2Fly YGz (“2Fly”)—that were operating in the Bronx, New York. The investigation revealed that since at least in or about 2007, up until in or about 2016, members of BMB and 2Fly were involved in a variety of racketeering acts, including murders, attempted murders, robberies, narcotics trafficking, bank fraud, and counterfeit currency offenses.

B. BMB

The structure of BMB is described accurately in the PSR.

BMB was a subset of the “Young Bosses,” or “YBz” street gang, which operates throughout the New York City area. BMB—whose members also sometimes refer to themselves

as the “Money Making Mafia” or “Triple M”—operated primarily on White Plains Road from 215th Street to 233rd Street in the Bronx, which is a long stretch of road under a subway train overpass that is hedged on each side by single-family homes and local commercial establishments. BMB’s narcotics trafficking activity was based principally in the vicinity of White Plains Road and 224th Street, an open-air drug spot that was referred to by gang members as the “Forts.” BMB members sold drugs and down White Plains Road, however, including at a spot on 219th Street and a house on 230th Street. BMB members sold crack cocaine, marijuana, and prescription pills, including Percocet pills (i.e., oxycodone). BMB members kept firearms at each of these White Plains Road locations. BMB members also operated a drug spot on Boston Road and Eastchester Road in the Bronx, which they refer to as “B Road.” BMB members who worked principally at the B Road spot typically refer to themselves as “Blamma.” Generally speaking, BMB members were encouraged to continue openly “jacking,” or proclaiming their membership in the gang, and many did so not only in person but also through social media websites such as Facebook.

In addition to its narcotics trafficking, BMB members and associates engaged in acts of violence, including shootings, stabbings, and gang assaults; these acts of violence protected the power of the gang, deterred attacks from rivals, and secured the gang’s territories and drug spots. Moreover, members who engaged in a sufficient amount of violence could earn a leadership position, which was referred to as a “Big Suit.” Members with “Big Suit” status were further subcategorized as, among other things, “Burberry Suits,” “Louis Suits,” “Gucci Suits,” “Ferragamo Suits,” and “Sean John Suits,” in order to signify their relative rank in the gang. Among other things, a BMB member with “Big Suit” status had the authority to recruit other individuals into the gang. Two of the highest-ranking “Big Suits” in BMB were NICO

BURRELL, a/k/a “Zico Nico,” and DOUGLAS MCLARTY, a/k/a “Q Don.” Both BURRELL and MCLARTY enhanced their status in the gang, in part, by committing attempted murders when they were each juveniles.

Members of BMB rose in status and rank within the gang not only by engaging in acts of violence, but also by maintaining their membership in the gang for a long period of time. Members who were loyal associates for a substantial amount of time are referred to as “Day One Niggas,” meaning that they have been associating with the gang since its earliest days. For example, in a posting on Facebook on July 7, 2013, BMB member RASHEID BUTLER, a/k/a “Rah,” wrote: “i love my Day1 Niggas that was here since this #TripleM Shit 1ST STARTED.” Similarly, BMB leader NICO BURRELL, a/k/a “Zico Nico,” discusses the “Day One” concept in a rap video posted on YouTube in December 2015 and entitled “Live From Gutter.” In the video, BURRELL raps, “No new niggas, only day one / I know they ain’t tellin’ if that day come,” after which another rapper repeats in the background, “no snitchin.”

BMB has, more generally, developed a gang norm against “snitchin,” or cooperating with law enforcement. For example, a BMB associate posted on Facebook on July 20, 2011, “Like QuDOn Said ‘No Snitchin Policy’”; the reference to “QuDOn” is a reference to MCLARTY, who is one of BMB’s leaders and whose alias is “Q Don.” BMB’s norm against “snitchin” was fostered through YouTube videos and social media postings, including postings in which gang members are praised for their refusals to cooperate with law enforcement in particular instances. The norm is also enforced through disparagement of and threats of violence against BMB members who are suspected of having violated the norm by cooperating. During the course of this investigation, law enforcement learned of at least one instance in which a BMB member’s home was fired upon because he made a statement to law enforcement about

individuals with whom he had committed a robbery. During another instance, the child of a suspected cooperator in this case was threatened and spat upon in the street. The norm against cooperation facilitates the gang's criminal enterprise and is one of the reasons why members of BMB tend to commit their robberies and fraud offenses with other members of BMB.

Many of the specific acts of violence committed by BMB members related to its longstanding rivalry with 2Fly, which is based principally in the nearby Eastchester Gardens public housing development ("Eastchester Gardens"), but which also has members who live in the "Valley" area just east of BMB's "B Road" spot on Boston Road and Eastchester Road. BMB also has developed rivalries with other street gangs in the northern Bronx, including the "Young Shooter Gang," or "YSGz," which is based in the Edenwald public housing development ("Edenwald"), and the "Slut Gang," which is based in the Boston-Secor public housing development ("Boston-Secor"). In connection with these rivalries, BMB members developed a practice of "mobbing," meaning to gather in large groups and travel to the base of operations of a rival gang to engage in violence there. Members of rival gangs also sometimes went "mobbing" and attack or attempt to attack BMB at its bases of operations. Videos of "mobbing" incidents were posted on YouTube. The close proximity of the BMB, 2Fly, YSGz, and Slut Gang bases of operations—all of which are in or on the border of the New York City Police Department's 47th Precinct—contributed to the frequency of acts of violence.

In addition to acts of violence, members and associates of BMB promoted their gang and disparaged rival gang members by highlighting a distinguishing feature of BMB: it is not based in a housing development, as are its principal rivals 2Fly (in the Eastchester Gardens), YSGz (in Edenwald), and the Slut Gang (in Boston-Secor). As noted above, BMB principally operated along White Plains Road, a long stretch of road hedged on each side by single-family homes and

local commercial establishments. The name of the gang (“Big Money Bosses”) and the other allusions to wealth that the gang employs (for example, the brand-name clothing retailers used to identify leadership positions) all serve to underscore this difference. In addition, members and associates of BMB have publicly mocked the living conditions of the housing developments in which many of their rivals live. For example, in a Facebook post on July 10, 2014, BMB member DONQUE TYRELL, a/k/a “Polo Rell,” posted a photograph of a young child laying on a bed and covered with cockroaches, with the caption “MEANWHILE IN EDENWALD.” In connection with the posting of this picture, TYRELL wrote, “Dirty ass project,” followed by six smiley-face “emoticons.” Similarly, in a Facebook posting on May 28, 2014, BMB member MASHUD YODA, a/k/a “Papa Ola,” writes, “No Lie ECG [*i.e.*, the Eastchester Gardens] The Dirtiest PROJECTS UPTOWN Like OBAMA Said CHANGE But I Guess He forgot Bout ECG !!”

Consistent with this feature of BMB, members and associates of the gang engaged not only in narcotics distribution and robberies to enrich and distinguish its members from rivals, but also engaged in a variety of frauds, including bank fraud and counterfeit currency offenses. To perpetrate some of these fraud offenses, BMB members and associates often employed their girlfriends and female acquaintances.

C. Abeberse’s Role in the Gang and Criminal History

Abeberse was an extremely violent and dangerous member of BMB. He carried and shot guns, sold crack, and proudly touted BMB’s norms in rap videos. Although he was previously arrested and served time for a few of these offenses, he was repeatedly shown leniency—serving, for instance, less than 2 years in prison for shooting someone—but was totally undeterred and kept committing crimes.

On August 27, 2009, Abeberse was arrested in possession of a loaded .22 handgun in the vicinity of Edenwald by police officers on patrol who were responding to a 911 call reporting shots fired; this led to Abeberse's juvenile adjudication. (See PSR ¶ 60.) Abeberse was sentenced to probation, which he violated twice. (PSR ¶ 60.)

On July 26, 2011, Abeberse was arrested for a shooting committed on July 3, 2011 in the vicinity of Edenwald at 225th Street and Laconia Avenue. The victim, believed to be a member of the YSGz, was a resident of Edenwald who stated to the police that multiple perpetrators came behind him and fired shots at him, hitting his left calf. According to an eyewitness, approximately 40 people were fighting and someone was yelling "Edenwald." Abeberse was identified as the shooter. (PSR ¶ 61.) He ultimately pled guilty in state court to assault in the second degree and served less than 2 years in prison before being paroled (again, he later violated parole and had to go back to jail). (PSR ¶ 61.)

On October 10, 2011, Abeberse participated in the beating and robbery of a woman at the 5-train station at Baychester Avenue just off of Boston Road in the Bronx. Abeberse ultimately pled guilty to a felony count of robbery and was sentenced to a one-to-three year term of prison, of which he served less than 2 years (concurrent to the term mentioned above) and then violated parole. (PSR ¶ 62.)

Abeberse also participated in a brawl that led to the murder of an innocent 15 year old boy. On May 15, 2010, Abeberse and a mob of other BMB members chased a group of men who were believed to be members of 2Fly. Among this group was 15 year old Jeffrey Delmore, who was not a member of a gang. Delmore was ultimately stabbed to death by Abeberse's fellow gang member, Dominick Sherland, a/k/a "D-Nick." Abeberse was one of the BMB members chasing and brawling with the other members of Delmore's group.

Abeberse further participated in BMB's narcotics conspiracy as a crack dealer. On January 15, 2013, he was found inside of an apartment on 3488 Fish Avenue in the Bronx—five blocks away from the “B Road” spot—in which a search warrant was executed, uncovering a scale with marijuana residue, numerous small unused ziplock bags, and three small bags of crack cocaine, as well as a loaded .45 caliber pistol. Abeberse was found in the apartment with BMB members Abdullah Yoda, a/k/a “Dellah,” and Marlon Roberts, a/k/a “Fetti,” and all three were arrested.

Abeberse was a proud and vocal member of the Gang, participating in rap videos meant to further the rivalry among street gangs in the 47th Precinct. For instance, Abeberse participated in a rap video entitled “Body Bags,” posted on YouTube on February 27, 2012. Abeberse is explicitly identified in the credits as a member of the “Big Money Bosses.” In the video, Abeberse raps a verse, during which he states, among other things, “Big Money Bosses, we BMB,” and makes references to shooting members of rival gangs. Sherland also appears next to Abeberse in the video.

In a rap video entitled “Duce Bigga- In The Field,” posted on YouTube on May 9, 2015, Abeberse states, among other things, “them niggas ain’t from B Road, them niggas ain’t from White Plains, them niggas ain’t got Big Money, them niggas can’t check my game.” Similarly, in a rap video entitled, “Duce Bigga – Panda BIGGAmix,” posted on YouTube on February 17, 2016, Abeberse raps, “I’m a Big Money Blamma.” Later in the video, Abeberse raps, “don’t act like you niggas don’t know me / on 24th like I’m Kobe.” “24th” is a reference to BMB’s “Forts” location on White Plains Road and 224th Street. Later in the video, Abeberse raps, “if it fly, land it / please do not come here with that shit,” a reference to 2Fly.

IV. The PSR and Guidelines Calculation

The PSR and the Plea Agreement differ as to the correct Guidelines range in this case. The Plea Agreement accurately calculates the Guidelines to be 120 to 150 months' imprisonment, based upon an offense level of 26 and a Criminal History Category of VI.

Specifically, as the Probation Office now agrees and as the parties stipulated, Abeberse is a career offender, based upon the assault and robbery convictions described above. Accordingly, he is designated in Criminal History Category VI. With respect to Abeberse's offense level, although he would normally be at level 37 because he is a career offender, the parties agreed to a downward departure to level 26 pursuant to Application Note 4 of Section 2E1.1 of the Guidelines in order to avoid an anomalous result because all of Abeberse's prior convictions were related to the instant offense. The Probation Office does not address the propriety of this departure, and did not award it. The Government continues to believe that the departure is appropriate under the circumstances of this case.²

3553(a) ARGUMENT

A sentence within the Guidelines range is necessary under the circumstances of this case in order to punish and deter Abeberse and to protect society from his future crimes. Abeberse is a long-term, consistently violent member of BMB who is proud of his membership in the Gang and has been totally undeterred by prior terms of imprisonment.

Abeberse's litany of offenses with the Gang illustrates the need for punishment and the danger he poses to society: an arrest with a loaded gun, a shooting at a public housing

² The Probation Office also identified a juvenile adjudication and related term of imprisonment about which the parties were not aware at the time of the Plea Agreement. This is immaterial, however, because the defendant's Criminal History Category is mandated by the career offender Guidelines.

development where families live, participation in a violent brawl that led to the murder of an innocent 15 year old boy, the robbery of a woman during which she was punched, and the sale of large amounts of crack cocaine. Prior arrests and convictions had no effect on Abeberse; he simply violated parole and kept his close ties to the Gang, starring in BMB rap videos espousing the Gang's violent norms and rivalries. A Guidelines sentence is necessary to punish and deter Abeberse and others from wreaking such havoc on the community.

The Government also opposes the Court's departing or varying from the Guidelines based upon the fact that Abeberse's prior offenses were for relevant conduct, as Abeberse seeks here. That fact has already expressly been taken into account in the *11-point downward departure* to which the parties stipulated in the Plea Agreement. Further credit or leniency based upon these prior convictions would result in a windfall that Abeberse does not merit. Rather, a severe sentence is necessary to meet the statutory sentencing purposes in this case.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court impose a Guidelines sentence.

Dated: New York, New York
August 17, 2017

Respectfully submitted,

JOON H. KIM,
Acting United States Attorney for the
Southern District of New York,

By: /s/
Rachel Maimin
Hagan Scotten
Jessica Feinstein
Drew Johnson-Skinner
Assistant United States Attorneys
(212) 637-2460